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**WAYNE BERRY**

IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

PLAINTIFF WAYNE BERRY'S  
REPLY TO PCT'S RESPONSE TO PLAINTIFF WAYNE BERRY'S  
PLAINTIFF WAYNE BERRY'S  
EX PARTE MOTION FOR ORDER GRANTING LEAVE TO FILE RESPONSE  
TO DEFENDANT PCT'S RESPONSE TO PLAINTIFF WAYNE BERRY'S  
LIMITED OBJECTION TO THE REPORT OF SPECIAL MASTER  
FILED BY FLEMING COMPANIES, INC.

Comes now Plaintiff Wayne Berry ("Plaintiff"), by and through his undersigned counsel and hereby respectfully submits this Reply.

Choosing consistency rather than reality the PCT has chosen to term what would normally be an Opposition into a Response but in doing so failed to oppose the *Ex Parte Motion*.

In addition, rather than just admit that the PCT missed this one, it compounds its loose cannon approach to the Court's Order and local rules by ignoring the simple fact that the Court had the power under the applicable rule to provide a shorter period and in fact did. *See Fed. R. Civ. P. 53(g)(2).* (...“unless the court sets a different time.”) The PCT Response appears to say that the Court was wrong not the PCT.

In addition, even if the PCT's tortured claim that what Mr. Berry filed on December 14, 2006 was a motion (so it follows that what the PCT filed on February 8, 2007 was an objection) the PCT forgot that the local rules provide 11

days to file an opposition to a nonhearing motion. *See* L.R. 7.4. The Court in its November 29, 2006 Order applied the nonhearing local rules. *See* November 29, 2006 Order at page 3. “Briefs remain due on the normal ten-day schedule for nonhearing matters, with no reply memoranda.” Declaration of Timothy J. Hogan filed on February 9, 2007, Exhibit “A” (Docket No. 1024) (emphasis added). Consistent with its earlier disregard regarding the Court’s Order, the PCT chose again to ignore the Order and provides no explanation.

DATED: Honolulu, Hawaii, February 12, 2007.

/S/Timothy J. Hogan  
TIMOTHY J. HOGAN